(9)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

WRIT PETITION NO. 5652 OF 2005

PETITIONERS :

1. Smt. Shahnaj Akhtar Qureshi , W/o Shri Quashim Qureshi, Aged about 45 years, Occupation – Janpad Member, Ravidas Ward Bhatapara.
2. Laxmi NarayanSharma S/o Jagdish Sharma, aged about 25 years, occupation Janpad Memberm, Ward No.10 Bitkuli, Bhatapara.
3. Rambagas Sahu S./o Anand Ram Sahu, aged about 59 years, occupation Janpad Member, Ward no.6 Sringerpur , r/o Bhatapara, District Raipur (CG).
4. Tekram S./o Sri Ram Prasad Verma, aged about 48 years, occupation, resident of Bhatapara, District Raipur.
5. Chait Ram S/o Runa Sahu, aged about 56 years, occupation M.L.A., resident of Bhatapara, District Raipur (CG).

C.R. No. 5273/05 Advocate for Petitioner(s) Amar Krishna Khare 8/11/05

26/10/05

VERSUS

RESPONDENTS :

RECEIVED COPY 8-11-05 CLERK to A. G. BILASPUR

(1) State of Chhattisgarh, Through the Secretary, Panchayat Department, D.K.S. Building, Raipur (C.G.)

(2) Director, Panchayat, Chhattisgarh, Raipur (CG).

R (3) Chief Executive Officer, Janpad Panchayat Bhatapara, District Raipur (CG).

(4) Collector, Raipur (CG).

(5) Sub Divisional Officer, Bhatapara, Distsrict Raipur (CG).

R (6) Smt. Malti Verma, President Janpad Panchayat Bhatapara,

(5)

resident of Bhatapara, District Raipur (CG).

(7) Santosh Verma , Vice President , Janpad Panchayat Bhatapara, District Raipur (CG).

WRIT PETITION U/A 226/227 OF THE CONSITITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

(1 2)

आदेश पत्रक

मामला क्रमांक W.P.No.5652/05 **सन् 200**

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

06/02/2007

Shri Sunil Sahu, counsel for the petitioners.

Shri Utkarsh Verma, Deputy Govt. Advocate for respondents No.1, 2, 4 and 5/State.

Shri Sandeep Dubey, counsel for respondent No.3.

Shri G.S. Agrawal, Sr. Advocate with Shri K.R. Nair, counsel for respondents No. 6 and 7.

Heard.

Respondent No.6 is the elected President of Janapad Panchayat, Bhatapara, who failed to call monthly meeting after 15/04/2005 up to 25/07/2005, therefore, averring that she did not call meeting in accordance with Section 44 (4) of the CG Panchayat Raj Adhiniyam, 1993 (henceforth, Adhiniyam 1993), therefore she, respondents No.4 and 7 are liable to be removed from their respective posts in accordance with Section 40 of the Adhiniyam, 1993.

Petitioners No. 1 to 3 are members of Janapad Panchayat, petitioner No.4 is a citizen and petitioner No.5 is an M.L.A. There is no infringement of rights of the petitioners which can be enforced. Section 44(4) , 44(7) and Section 40 of the Adhiniyam, 1993 read as below:

> *"44 (4) The President or Sarpanch shall call a meeting of Zila Panchayat, Janpad Panchayat or Gram Panchayat, as the case may be, at least once every month. If the President or Sarpanch fails to call the meeting in any month the (the Chief Executive Officer of the Zila Panchayat or Janpad Panchayat or Secretary of the Gram Panchayat as the case may be) shall issue a notice of the meeting of the Panchayat concerned as soon as*

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

twenty five days elapse after the date of the last meeting."

"44 (7) If the President or the Sarpanch, as the case may be, fails on at least three occasions to act in accordance with sub-section (4) or sub-section (6), he shall be liable to be removed from his office under Section 40 and the provisions of Section 40 shall be applicable to him, who has been so removed."

*"40. **Removal of office bearers of Panchayat** – (1) The State Government or the prescribed authority may after such enquiry as it may deem fit to make at any time, remove an office bearer -*

(a) If he has been guilty of misconduct in the discharge of his duties; or
(b) If his continuance in office is undesirable in the interest of the public;

Provided that no person shall be removed unless he has been given an opportunity to show cause why he should not be removed from his office.

Explanation - For the purpose of this sub-section "Misconduct' shall include –
(a) any action adversely affecting –

i) the sovereignty, unity and integrity of India; or
ii) the harmony and the spirit of common brotherhood amongst all the people of State transcending religious, linguistic, regional, caste or sectional diversities; or
iii) the dignity of women; or
(b) gross negligence in the discharge of the duties under this Act.

(पीछे देखिये)

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आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

(c) the use of position or influence directly or indirectly to secure employment for any relative in the Panchayat or any action for extending any pecuniary benefits to any relative, such as giving out any type of lease, getting any work done through them in the Panchayat by an office bearer of Panchayat.

Explanation - For the purpose of this clause the expression 'relative' shall mean father, mother, brother, sister, husband, wife, son, daughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, son-in-law or daughter-in-law ;]

[Provided that the final order in the inquiry shall as far as possible, be passed within 90 days from the date of issue of show cause notice to the concerned officer bearer.]

(2) A person who has been removed under sub-section (1) shall forthwith cease to be a member of any other Panchayat of which he is a member; such person shall also be disqualified for a period of six years to be elected under this Act."

Office bearer has been defined under Section 2 (xiii) of the Adhiniyam, 1993 which reads as below:

"2(xiii) "Office bearer" means a panch, sarpanch or upsarpanch of a gram panchayat, a member, President or vice-president of a Janpad Panchayat or a member, or president or vice-president of Zila Panchayat, as the case may be."

Admittedly on 15/042005 and 25/07/2005 meeting of Janpad Panchayat was held, in between 16/04/2005 to 24/07/2005 no meeting was called. After elapse of twenty-five days, a duty has been cast on the Chief Executive Officer of Janpad Panchayat to issue notice calling

(पीछे देखिये)

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(V29)

आदेश पत्रक

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

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meeting in accordance with Section 44(4) of the Adhiniyam, 1993. The Chief Executive Officer of the Janpad Panchayat failed to perform his duties as envisaged under Section 44 (4) of the Adhiniyam, 1993. Chief Executive Officer/or Collector does not fall within the definition of office bearer. President, Janpad Panchayat cannot be punished for the fault of Chief Executive Officer. So far as Vice-president is concerned, he has no role under Section 44 (4) of the Adhiniyam, 1993.

Petitioners have no *locus standi* to ask the court to step in under Article 226 of the Constitution, if at all they have any grievance should avail remedy available under the Adhiniyam, 1993.

In view of the above, petition is liable to be dismissed and is accordingly dismissed.

Sd/-
V.K. Shrivastava
Judge

Raju

(पीछे देखिये)

12/2 2017